

Court costs down. But only some

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On the occasion of the reform of the civil procedure in 2019, the maximum limit of the 5% proportional fee was increased twice (from PLN 100 thousand to PLN 200 thousand) / shutterstock

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On the occasion of the reform of the civil procedure in 2019, the maximum limit of the 5% proportional fee was increased twice (from PLN 100 thousand to PLN 200 thousand). However, at the same time, in order to prevent the excessive burden of court costs on the persons with bank loans in CHF involved in litigation against their

lenders – with respect to claims arising from banking activities exceeding PLN 20 thousand, a fixed fee of PLN 1 thousand was introduced instead of a fee of 5% of the value in dispute. Now the Ministry of Justice intends to extend these reductions to cases concerning claims arising out of consumer credit agreements and agreements on trading in financial instruments.

From 200 thousand to 1 thousand

“In cases involving claims under such contracts, the consumer and the natural person running a family farm is the economically weaker party. The flattening of the maximum proportional fee (to PLN 1 thousand) is therefore justified. This solution will significantly allow consumers and farmers running family farms easier access to court, as it will eliminate the need to pay high court fees or to apply for exemption from such fees,” states the explanatory memorandum.

The same reduction will apply to cases in which a creditor requests that a legal transaction performed by a debtor to the detriment of the creditor be declared ineffective (if the creditor’s claim against the debtor has already been established by a final and binding court ruling). In this case, a proportional fee of up to PLN 200 thousand is also charged. However, since this is the second lawsuit brought by the creditor to satisfy a claim, it is reasonable to reduce this fee to PLN 1,000.

Absurd loophole

The draft amendment to the Act on court costs in civil cases (“the Court Costs Act”) submitted for consultation also eliminates an absurdity that appeared after the introduction of a fee on a motion for statement of reasons. Pursuant to Article 25b of the Court Costs Act, a fixed fee of PLN 100 is charged on a motion for serving a ruling or order with statement of reasons, and no exceptions are provided for. Even if the motion concerns a statement of reasons for a decision on exemption from court costs. In this situation, a party who cannot afford to pay the costs must first pay PLN 100 before they can appeal against the decision refusing exemption from costs, in order to learn the reasons for the judicial official’s decision. Previously, for decades the proceedings for exemption from court costs (granting the right of the poor) were entirely free of court fees.

Although the literal interpretation of the provisions does not give grounds to waive the fee, the Supreme Court in its resolution of 16 July 2021 (case III CZP 49/20) held that a motion for a written statement of reasons for a decision refusing exemption from court costs is not subject to a fixed fee of PLN 100.

Instead of lowering the fee, it should be abolished and ex officio statement of reasons given for appealable decisions should be reinstated

– The decision to depart from the literal interpretation of Article 25b of the Court Costs Act and to look for a solution based on the functional and systemic interpretation is supported, first of all, by legal considerations of the utmost

importance connected with the axiology of the legal concept of the right of the poor, the Supreme Court indicated in the reasons for its resolution. – The legal concept of exemption from court fees is an inseparable element of the right to a court and is to ensure access to the justice system to all those who do not have sufficient financial means to cover the costs connected with a civil case. The right to a court is one of the fundamental rights, thus all guarantees of this right should be interpreted in a way which optimally favours the effectiveness of its protection, added the Supreme Court.

It follows from this resolution that the only interpretation of these solutions that does not interfere with the right to a court must therefore be that costs are to be charged neither after one is granted the exemption nor in the proceedings aimed at being granted the exemption. This is because applying for a right of the poor cannot generate costs if a party claims that they cannot bear them, which must apply to all stages of these proceedings. The Supreme Court even stated that “apparently the legislator, by simultaneously introducing many different statutory changes, remodelling the judicial remedies and not following the systemic assumptions, has overlooked” that the changes would lead to such consequences.

In this situation, the Ministry of Justice had no choice but to correct this “omission” by amending the provisions.

Reduction is not enough

By the way, as we announced in July last year, the Ministry of Justice decided to reduce the fee on a motion for statement of reasons for interlocutory decisions from PLN 100 to PLN 30. In the opinion of the authors of the legislative bill, a fee of PLN 100 for a statement of reasons for such a ruling is disproportionate. Moreover, it sometimes happens that the fee on a motion for statement of reasons for a decision is significantly higher than the fee for an interlocutory appeal against such a decision.

– Taking into account the fact that filing a motion for statement of reasons is currently a prerequisite for appealing against a court ruling, such a fee rate is a barrier to access to an appeal. Therefore, it is proposed that a fixed fee of PLN 100 should be charged only on motions for statement of reasons for judgements or for decisions on the merits of the case issued in non-contentious proceedings. The fee on the motion for statement of reasons for other decisions or orders should be lower and should amount to PLN 30. Such a rate would be sufficient to prevent abuse connected with unnecessary filing of motions for statement of reasons, and at the same time it would be proportional to the significance of the procedural decision the reasons for which are requested by a party, indicate the authors of the provisions.

The principle is to be maintained that if a party files an appeal, the fee for statement of reasons is credited towards court costs for proceedings at second instance.

According to Adam Zwierzyński of Radzikowski, Szubielska i Wspólnicy, the reduction of the fee on motions for statement of reasons to PLN 30 does not solve the problem.

- Firstly, this applies only to interlocutory decisions, secondly, the problem is not the amount of the fee but the changes introduced in this respect to the civil procedure in 2019. Instead of lowering the fee, it should be abolished altogether and, additionally, the principle of giving reasons for appealable decisions ex officio should be reinstated, he points out.

In his opinion, practice shows that the artificial division of the interlocutory appeal procedure into two stages only prolongs it unnecessarily. – Giving reasons is not an unpleasant duty of the court, whose efforts are wasted if the party does not appeal the ruling. The provisions in this important area should not be built on the assumption of the need to avoid abuse and unnecessary motions (and such arguments are given by the authors of the legislative bill). In a state governed by the rule of law, every citizen has the right to know the reasons for the court's decision in their case, even if they do not intend to appeal it, adds the advocate.

- Three issues are of fundamental importance when it comes to fees: their rational amount related to the potential financial benefit to the initiator of the proceedings, the fee as a tool to discourage people from extracting statements of reasons from judges, and the unimaginable diversification of fees and their quite frequent changes. The latter has the effect that it is easy to overpay or underpay something, which generates unnecessary confusion, explains Edwin Góral, a Warsaw-based legal advisor.

He adds that in a situation where someone pays several thousand zlotys as a fee on a statement of claim, demanding an additional PLN 100 for the court to send them a statement of reasons is usually connected with a disproportionate effort on the part of both the party and the court, associated with initiating the procedure.

- The changes have gone in the direction of disciplining – in a way that has no equivalent in the civilised world – people who may not have access to the internet and who are, for example, 10 kilometres from the nearest post office, to do more just to find out the reasons. That is low. It is a kind of gaining of undue advantage by the state over its citizens. And the most unethical action of the court is not informing about the account number, comments Edwin Góral.

Award for settlement

Another reduction concerns the costs of conciliation proceedings. For years, a motion for conciliation was subject to a fee of PLN 40, and in cases with a value in dispute exceeding PLN 10 thousand – PLN 300. Thus, it was an inexpensive way to interrupt the running of the statute of limitations. As of 2019, this amount has been

raised to one-fifth of the fee on the statement of claim, which means that it may amount to as much as PLN 40 thousand.

Experts argued at the time that such a significant increase in fees would discourage attempts to end the dispute amicably. That is why now the Ministry of Justice wants three-quarters of the fee to be returned in the case of entering into a settlement agreement.

- This is a very good idea. The lack of a similar solution was a clear mistake of the 2019 amendment, which drastically increased the fees on such motions. A better idea, however, would be to restore a low fixed fee for the motion, and to look for ways to limit motions for conciliation filed only to interrupt the running of the statute of limitations in amendments to the Civil Code, points out Adam Zwierzyński.

As a reminder, the Sejm has recently passed an amendment to the Civil Code which clearly stipulates that a motion for conciliation or mediation does not interrupt the running of the statute of limitations, but only suspends it for the duration of the conciliation proceedings. ©®

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